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Before the

FEDERAL COMMUNICATIONS COMMISSION JAN 11 1996

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Rosendale, New York))

MM Docket 93-17

RM-8170

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

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SUMMARY

SUNY's petition for reconsideration argues that its license for Station WFNP, Rosendale, should have been modified to commercial Channel 273A because another commercial channel was available for other applicants. However, Commission policy and precedent disfavors a modification of a noncommercial educational station to an unreserved commercial channel without a showing of overriding public interest benefits. The Commission's policy is based on the preservation of noncommercial educational service. SUNY has failed to demonstrate an overriding benefit particularly since Channel 273A could have been reserved consistent with the Commission's policy due to the proximity of a TV Channel 6 station. In addition, unless Channel 273A were reserved, the only noncommercial educational station licensed to Rosendale would not be preserved for future use. SUNY has not proposed an improvement to counterbalance this Commission goal. These factors distinguish the Sioux Falls case now cited by SUNY but not previously relied upon by SUNY. These factors also put the Rosendale decision on all fours with the Siloam Springs, Arkansas case.

SUNY is seeking to be modified to commercial Channel 273A rather than Channel 255A both of which can be reserved for noncommercial educational use to serve Rosendale. However, SUNY's preference for Channel 273A has not been demonstrated to

provide any public service benefit and certainly does not outweigh SHU's public interest goals stated in a separate petition for rule making including a first local service, a first and second noncommercial educational service to substantial areas and population, increasing another station to a 6 kW Class A facility and providing classical music to an area which has expressed a demand for such programming.

For all of these reasons, SHU urges the Commission to refuse modification of SUNY's license to Channel 273A in favor of the comparative hearing (or alternate selection) process.

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OPPOSITION TO PETITION FOR RECONSIDERATION

Sacred Heart University, Inc. ("SHU"), by its counsel, hereby submits its opposition to the Petition for Reconsideration filed by State University of New York ("SUNY") on November 21, 1995, in the above captioned rule making proceeding.^{1/} SHU opposes SUNY's request to have its license modified to specify unreserved commercial Channel 273A allotted to Rosendale.^{2/} SUNY has failed to demonstrate sufficient

^{1/} On December 19, 1995, the Commission published notice of the Petition for Reconsideration in the Federal Register and set a deadline of January 3, 1996, for oppositions. 60 Fed. Reg. 65324 (1995). Due to the Federal shutdown, SHU was unable to file this pleading until the Commission reopened today.

^{2/} SHU is aware that SUNY has filed an "Emergency Request for Stay of FM Application Window." SHU is unaware of any action taken by the Commission on that request for stay. The filing window closed on January 4, 1996. Thus, the Commission's inaction before the close of the window renders the request moot.

public interest reasons to justify a modification of its license to a commercial channel.

BACKGROUND

1. SUNY originally filed a Petition for Rule Making on February 24, 1992, proposing to delete Channel 204B1 from New Paltz, New York,^{3/} on which Station WFNP operates on a shared-time basis with Station WRHV, Poughkeepsie, New York, and to add Channels 255A and 273A to Rosendale, New York. In addition, SUNY requested that its license be modified to specify Channel 273A and to specify Rosendale as its city of license. SUNY offered an additional channel (255A) for allotment should there be another interest expressed in operating a Rosendale station.

2. On April 2, 1992, the Acting Chief, Allocations Branch denied consideration of the petition citing Section 1.420(j) which provides that a license cannot be modified to specify a new community of license unless the current and proposed channels are mutually exclusive.

3. On January 11, 1993, SUNY resubmitted the petition indicating that it is the licensee of Channel 204A at Rosendale and therefore was not seeking a change in community of license. No explanation was given as to when and how it changed its class of channel (from B1 to A) and its community of license (from New

^{3/} Rule making action is not necessary to delete a noncommercial educational channel from the reserved portion of the band.

Paltz to Rosendale). But, by having become licensed to Rosendale, SUNY argued that WFNP was eligible for a modification of its license to Channel 273A and that should there be another interested party, Channel 255A would be available for that purpose. See Notice of Proposed Rule Making ("Notice"), 8 FCC Rcd 947 (1993). The Notice indicated that SUNY made no attempt to demonstrate that Channel 273A should be reserved for noncommercial educational use and would need to do so if it desired to operate on a reserved channel.

4. SHU and Radio South Burlington (RSB), permittee of Station WQQQ(FM), Sharon, Connecticut, jointly filed a counterproposal in which they requested that Station WQQQ be modified from Channel 277A to Channel 273A and its community of license changed from Sharon to Washington, New York. They also requested that Channel 277A remain at Sharon and be reserved for noncommercial educational use for which SHU stated that it would apply. Finally, they suggested that Channel 255A be allotted to Rosendale and reserved for noncommercial educational use if SUNY sought a modification of its license.

5. In reply comments, SUNY repeated that it did not want Channel 273A reserved for noncommercial educational use at Rosendale but did expect its license to be modified since alternate Channel 255A was available for commercial interests. Furthermore, it was not interested in filing for Channel 255A at Rosendale because it "intends to build facilities at its

existing location." (Reply at p. 2.) Furthermore, it stated that if it moved to Channel 255A it would not provide a city grade signal to New Paltz requiring it "to move its studios or seek a waiver." (Reply at p. 2.)^{4/}

6. In its reply, SHU/RSB clarified its position that the two proposals were not inextricably intertwined, i.e., RSB's proposal for Channel 277 at Washington was not dependent on SHU's proposal for a noncommercial educational channel at Sharon. Rather, Channel 277A could be substituted for Channel 273A at Sharon and Channel 273A then allotted on a reserved basis.

7. In a supplemental pleading, SHU/RSB pointed out that SUNY had not expressed a willingness to apply for Channel 273A at a site that would meet the Commission's spacing requirements. Furthermore, if SUNY did apply for Channel 273A from its existing site pursuant to Section 73.215, it must propose less than 6 kW or a directional antenna. In either case, it would not be able to achieve a 70 dBu signal over Rosendale.

^{4/} Of course, the Commission would not require a 70 dBu signal over New Paltz if Rosendale is the community of license. It is interesting that SUNY seems confused as to its community of license which is crucial to its eligibility to have its license modified. Nevertheless, SUNY clearly desires to use its current site for Channel 273A (which is short spaced) over a relocation which would accommodate the use of Channel 255A. It is interesting to note that SUNY proposed a reference point for Channel 273A which can also be used for Channel 255A consistent with Section 73.215 of the Commission's Rules.

8. SUNY responded by stating that it has merely expressed a preference for remaining at its current site and that Channel 273A provides more flexibility than Channel 255A "with respect to transmitter sites." (SUNY response at p. 3.) However, SUNY did not demonstrate that it could provide city grade coverage to Rosendale from its current site.

9. In its Report and Order, the Commission, inter alia, rejected the SHU\RSB counterproposal due to RSB's ineligibility to have its license modified to a new community on a nonadjacent channel. As for SHU's alternate proposal for a noncommercial educational allotment at Sharon, the Commission held that the proposal was neither clearly stated nor implicit following rejection of the joint proposal.

10. As for SUNY's request for the allotment of Channel 273A to Rosendale and modification of its license in view of the availability of Channel 255A, the Commission held that it would be improper to modify a noncommercial educational license to a commercial channel without that channel being reserved for noncommercial educational use under the procedures set forth in Section 1.420(g) of the Commission's Rules. Citing Siloam Springs, Arkansas, 2 FCC Rcd 7485 (1987), aff'd 4 FCC Rcd 4920 (1989) and Bulls Gap, Tennessee, 10 FCC Rcd 10444 (1995).

11. In view of the fact that SUNY's license was not modified, the Commission did not address SUNY's failure to explicitly state that it would apply for a transmitter site for

Channel 273A that would meet the Commission's spacing and city grade coverage rules except to state that "we expect that the application will comply with the technical requirements set forth in the Commission's Rules." See Report and Order at Note 9.

12. In its petition for reconsideration, SUNY charges that the Commission has not specifically prohibited the modification of a noncommercial educational license to an unreserved commercial channel under Section 1.420(g). Further, it contends the Commission's public interest goal of encouraging broadcast licensees to upgrade their facilities would apply in this instance. SUNY argues that the Commission's decision incorrectly applied the Sioux Falls, South Dakota case, 51 Fed. Reg. 4169 (1986) to its request for modification. SUNY notes that, in that case, the Commission modified a noncommercial educational licensee to a commercial channel where another commercial channel was available. SUNY also complains that it is unlikely to succeed in a comparative proceeding for Channel 273A against commercial applicants and, finally, that it was unfair for the Commission to not have warned SUNY of its policy against modification in advance of the Report and Order.

DISCUSSION

A. THE COMMISSION'S DECISION WAS PROPERLY BASED ON COMMISSION POLICY AND PRECEDENT

13. As will be discussed, the Commission's decision properly applied Section 1.420(g) and prior case law based on sound public interest goals. The Commission has not been unfair to SUNY. Rather, it is SUNY which has overreached in its attempt to obtain a commercial channel for its own private benefit.

14. Historically, the Commission has not favored the modification of an existing station's license where it has affected the Ashbacker^{5/} rights of other parties. In such cases, the Commission has required a showing that sufficient public interest reasons exist for modifying an existing license rather than providing the opportunity for interested parties to apply for that particular channel. See Cheyenne, Wyoming, 62 FCC Rcd 63 (1976); Modification of FM and TV Station Licenses, 56 RR 2d 1253 (1984). Prior to the Cheyenne ruling, the Commission had no stated policy for modifying an existing license where to do so would have constituted a major change. See Section 73.3573(a)(1) of the Commission's Rules. Following Cheyenne, the Commission ruled that rather than allot the channel and wait to see if there were competing applications, it could offer that opportunity in the rule making context

^{5/} 326 U.S. 327 (1945).

consistent with Ashbacker. See Modification of FM and TV Station Licenses, supra. Subsequently, the Commission carved out another exception in the adjacent and co-channel context. Modification of FM Broadcast Licensees to Higher Class Co-Channels in Adjacent Channels, 60 RR 2d 114 (1986). But, these rules have only applied to commercial stations seeking commercial channels or, in the rare example, to a reserved channel where a rule making proceeding is involved. Therefore, the language of Section 1.420(g) must be construed consistent with the Commission's original policy against modifications. The Commission's willingness to grant exceptions to this policy occurred only upon a finding that Ashbacker rights were not violated.

15. Here, SUNY seeks to have its existing noncommercial educational license modified to a commercial channel under Section 1.420(g) pointing to the availability of another commercial channel. SUNY made no attempt to explain why it wanted a commercial channel where it could have had the channel reserved. The Commission has previously dealt with this exact situation and refused to extend the concept to a noncommercial educational station seeking to modify its license on an unreserved channel. Siloam Springs, Arkansas, supra. The Commission staff ruled in that case that a non-reserved channel was not equivalent to a reserved channel. The noncommercial educational license would be receiving an added benefit while the public would be deprived of the preservation of a

noncommercial educational service, particularly where, as in Siloam Springs, there was no other local noncommercial educational service available.

16. SUNY states that it was unfair for the Commission to wait until the Report and Order to announce its policy that a noncommercial educational licensee cannot be modified to a commercial channel. But SUNY did not rely upon the staff's decision in Sioux Falls, South Dakota in any of its prior pleadings.

17. In Sioux Falls, the Commission stated that it "misinterpreted the desire of Station (sic) KCFS to provide Sioux Falls with two noncommercial educational services on Channels 211A and 215A and instead deleted the station from Channel 211A." Report and Order at ¶3. The Commission subsequently recognized the error and initiated a rule making proceeding to provide a channel, albeit a commercial one, for that operating station. In doing so, the Commission noted that Sioux Falls received local noncommercial educational service from four stations and that a reservation of the channel could not be supported by TV Channel 6 interference or preclusion from Canadian or Mexican frequency usage. Thus, the Commission was able to exercise its own modification authority under Section 316 of the Communications Act, as amended, and Section 1.87 of the Commission's Rules where the public interest warranted the modification.

**B. SUNY HAS NOT DEMONSTRATED AN OVERRIDING
PUBLIC INTEREST BENEFIT FOR MODIFICATION
TO AN UNRESERVED CHANNEL**

18. In the instant case, SUNY has not shown that a modification is warranted either by creating an exception to Section 1.420(g) for a noncommercial educational station or by the Commission's own modification authority pursuant to Section 316 of the Act and Section 1.87 of the Rules. SUNY has had numerous opportunities to request and demonstrate that Channel 273A (or Channel 255A) should be reserved for noncommercial educational use. A modification of its license to an equivalent reserved channel would not have conferred an unwarranted benefit. However, to modify SUNY's license to a commercial unreserved channel would confer a private benefit to SUNY, i.e., its ability to convert or sell the station to a commercial operation, without a corresponding public benefit. In fact, by failing to preserve the noncommercial educational nature of the station, the Commission would be eliminating the only local noncommercial educational service to Rosendale's residents.

19. SHU demonstrated in its counterproposal of April 12, 1993 (see Engineering Statement at pp. 6-7) that reservation of a commercial channel was warranted. The Rosendale reference coordinates are located within the Grade B contour of TV Channel 6 Station WRGB, Schenectady, New York. The furthest removed channel from the Channel 6 band (Channel 220) would cause interference to more than 3,000 persons in violation of

Section 73.525(e).^{6/} No showing was attempted from WFNP's existing site. Yet, SUNY had several opportunities both before and after SHU's counterproposal to agree to a modification of its license to a reserved channel. The fact that it intentionally decided not to accept a reserved channel leads to the conclusion that it must intend to convert or sell the station to a commercial operation at a future date. Any such change would confer a strictly private benefit and defeat the Commission's public interest goal of preserving Rosendale's only local noncommercial educational station, albeit a shared time operation. This finding sufficiently distinguishes the Sioux Falls case upon which SUNY now relies and places it more squarely within the holding of the Siloam Springs precedent.

20. Now that the Commission has opened a filing window for Channel 273A and SHU, among others, has already filed applications^{7/} for that channel, it is too late for SUNY to

^{6/} The Commission did not address this showing in the Report and Order perhaps because it failed to recognize SHU's showing or was focused only on Channel 273A while SHU's showing specified Channel 255A. SHU believes the Commission was incorrect in its failure to recognize that Channel 273A or Channel 255A at the reference coordinates met the Commission's requirements. To the extent that the Commission's statement refers only to Channel 273A (at different reference coordinates than Channel 255A), the attached Engineering Statement confirms that Channel 273A also meets the Commission's requirements with respect to Channel 6.

^{7/} The filing window for Channel 273A closed on January 4, 1996. Applications for commercial use of the frequency could have been filed at the Mellon Bank in Pittsburgh with a filing fee. SHU, SUNY and other noncommercial
(continued...)

change its mind, if it is inclined to do so, and request modification to Channel 273A on a reserved channel.

**C. SUNY HAS FAILED TO DEMONSTRATE HOW
THE PUBLIC WILL RECEIVE AN
IMPROVEMENT IN SERVICE**

21. SUNY contends that by modifying its license to Channel 273A the Commission's goals of "encouraging broadcast licensees to upgrade their facilities in order to improve service to their audiences" would be served. (Petition for Reconsideration at 4.) However, SUNY has not demonstrated how a modification of its license to Channel 273A would, in fact, improve service to the public. The public now receives full-time programming on Channel 204A albeit from two different licensees. If SUNY's license is modified to Channel 273A, then the public will receive full-time programming on Channels 204A and 273A. But if another applicant is chosen for Channel 273A, the public will still receive full-time programming on Channels 204A and 273A. Who is to say prior to a hearing (or alternative selection method) that SUNY's programming on a 24-hour basis is preferable to the proposed commercial (or noncommercial educational) programming to be provided by one of the applicants for Channel 273A at Rosendale.

1/ (...continued)

educational applicants were barred from filing at the Commission's Secretary's Office during the Federal shutdown. SHU is filing its application concurrently with this pleading on the first day that the Commission reopens for filings.

22. Furthermore, SUNY has failed to demonstrate what service improvements it plans to make. It has not shown that Channel 273A will offer more power or provide service to more persons from its current site or some other site. As the attached Engineering Statement indicates, SUNY will be required to use a directional antenna or lower its power from its current site on Channel 273A resulting in less coverage. In addition, SUNY would not be able to provide the minimum of 80% coverage of Rosendale. SHU is unaware of what Commission goals SUNY expects to serve by being modified to Channel 273A other than its own private goal of reaching some portion of its current audience 24 hours a day. But that has not been shown to be of public benefit.

23. SUNY cannot now submit new information which was previously available to it before under Section 1.429 of the Commission's Rules. Nor can SUNY seek modification to Channel 255A as a reserved channel in view of SHU's pending petition for rule making and the applications that have been filed for Channel 273A.

**D. THE COMMISSION SHOULD GIVE NO WEIGHT
TO SUNY'S PREFERENCE FOR CHANNEL 273A**

24. SHU's petition seeks, inter alia, to substitute Channel 255A for Channel 273A at Rosendale, substitute Channel 273A for Channel 277A at Sharon, Connecticut, and allot Channel 277A as a reserved noncommercial educational channel and first

local service to North Canaan. SHU is aware that SUNY has filed comments opposing its petition. SHU is separately filing a response to those comments. Suffice it to say in this context that SUNY's motive in opposing Channel 255A for Rosendale is strictly a matter of site selection. SUNY has stated in its previous pleadings that it prefers to use its current site which is possible under Section 73.215 on Channel 273A but not consistent with that rule on Channel 255A. However, as SHU has stated in previous pleadings, SUNY's existing site is not expected to provide city grade coverage to at least 80% of Rosendale. Whether SUNY files its application for Channel 273A at its current site with a waiver of the city grade requirement or not, the fact that SUNY's opposition is based on a site preference does not justify denying the countervailing public interest benefits set forth in SHU's petition.

25. For the record here, those benefits include a substantial first (white) and second (grey) noncommercial educational service area in northwest Connecticut, a first local service to the larger community of North Canaan, and a classical and NPR station to an active cultural and fine arts region. These benefits can be achieved while still providing a first local commercial full time or noncommercial educational service to Rosendale and upgrading Station WQQQ's license from a 3 kW facility on Channel 277A to a 6 kW facility on Channel 273A.

CONCLUSION

26. The Commission correctly determined that SUNY's license should not be modified to Channel 273A. This decision correctly applied Section 1.420(g) and prior case law in view of the historical development of the Commission's modification rules consistent with Ashbacker. SUNY's desire to operate on a commercial channel (despite SHU's showing that reservation for noncommercial educational use was warranted) would have resulted in a private benefit and eventually deprived Rosendale of its only local noncommercial educational station. For all of these reasons, SUNY's petition for reconsideration should be denied.

Respectfully submitted,

SACRED HEART UNIVERSITY, INC.

By: _____

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Its Counsel

January 11, 1996

**ENGINEERING STATEMENT IN SUPPORT OF
OPPOSITION TO PETITION FOR RECONSIDERATION**

**AMENDMENT OF SECTION 73.202(b)
TABLE OF ALLOTMENTS**

STATE UNIVERSITY OF NEW YORK

ADD CH 273A (DELETE CH 204A)

AT

ROSENDALE, NEW YORK

JANUARY 1996

**ENGINEERING STATEMENT IN SUPPORT OF
OPPOSITION TO PETITION FOR RECONSIDERATION
AMENDMENT TO SECTION 73.202(b)
TABLE OF ALLOTMENTS
STATE UNIVERSITY OF NEW YORK
ADD CH 273A (DELETE CH 204A)**

**AT
ROSENDALE, NEW YORK**

JANUARY 1996

SUMMARY

The following engineering statement has been prepared on behalf of **Sacred Heart University, Inc.** ("SHU"). SHU is filing the instant engineering statement as part of its opposition to a Petition for Reconsideration filed by the State University of New York ("SUNY") in MM Docket No. 93-17. SUNY requests that its license be modified to specify operation on unreserved commercial Channel 273A which was allotted to Rosendale, New York in RM-8170, MM Docket 93-17.

SHU believes that SUNY has failed to demonstrate sufficient public interest benefits and that modification of its license to a commercial channel is not warranted. In support of this statement SHU demonstrated in its April 12, 1993 counterproposal that Channel 255A could be allocated to Rosendale, New York as a reserved channel due to the fact that Channel 6 television station WRGB, Schenectady, New York precludes a full Class A noncommercial FM station in the reserved band. A similar showing concerning the Channel 273A reference coordinates is found herein. SHU addresses the substandard Class A facilities which are associated with SUNY's use of its current site (WFNP-FM) on Channel 273A.

CH 273A REFERENCE COORDINATES - CHANNEL 6 PRECLUSION

SHU has determined that a new NCE-FM station is precluded from operation in the reserved FM band, at the Channel 273A reference coordinates for Rosendale, New York, by the requirements found in *Section 73.525* of the Rules. The proposed Rosendale reference coordinates are located inside the Grade B service contour of Channel 6 TV station WRGB, Schenectady, New York. *Section 73.525(c)* states that an applicant for a new NCE-FM station must submit a showing indicating that no more than 3,000 persons will receive predicted interference from the proposed NCE-FM station. SHU will demonstrate that, in the best case, interference to Channel 6 television will occur to 4,292 persons from a 6 kW at 100 meter HAAT, Class A facility located at the proposed reference coordinates and operating on Channel 220.

The site of WRGB TV is located 90.7 km from the Rosendale allocation reference coordinates at a bearing of 2.1 degrees True. WRGB is licensed for an ERP of 93.3 kW and a radiation center 555 meters AMSL. Based on this data and terrain elevations from the NGDC 30 second terrain database, the HAAT on the direct 182.1° radial from WRGB to the Rosendale coordinates is 213 meters and the signal level is 48.6 dBu. The interfering contours to the WRGB signal around the Rosendale site are computed below as described in *Section 73.525(1)*.

Ch 6 Signal WRGB TV - dBu	Ch 220 73.599 Fig. 2 dB Offset	Resulting Ch 220 NCE-FM Interfering Contour - dBu
50.6	34.5	85.1
48.6	37.0	85.6
47.0	39.0	86.0

It is clear from the above analysis and review of map Figure 1 (attached) that the 86.0 dBu contour represents the signal level that will cause predicted interference to Channel 6 service. Computations have been performed for Channel 220 since this channel has the least impact on Channel 6 reception for 6 kW at 100 meters HAAT, circular polarization. As the channels go progressively lower, the interfering contour extends further from the site and the affected population increases (see 73.599 Fig. 1 and Fig. 2). Therefore, this analysis, for Channel 220, reflects the lowest possible interference to Channel 6. If *Section 73.525* acceptability criteria cannot be met on Channel 220, it cannot be met on a lower channel.

The 6 dB receive antenna directivity factor from *Section 73.525(a)(iii)* applies over the arc from 252.1 degrees clockwise through 112.1 degrees where the proposed ERP is reduced by 6 dB to account for receive antenna directivity. Table I, attached, depicts distance to the WRGB service contours while Table II gives distances to the proposed Channel 220 NCE interfering contours.

Population within this interference area was counted at the block level using the centroid retrieval method. This method has been determined to be the most accurate method of computing population based on past Mass Media Bureau correspondence to **Sacred Heart University** and others. Population in the common overlap area between the 86 dBu interfering contour and the WRGB 47 dBu service contour is 4,292 persons as seen in Table III. This value exceeds the 3,000 maximum allowed by the Rules and demonstrates that Channel 273 could be reserved for NCE FM operation.

SUNY USE OF THE WFPN TRANSMITTER SITE FOR CH 273A

SUNY has expressed a preference for Channel 273A stating that it can apply for Channel 273A under Section 73.215 using its current transmitter site. SHU disagrees with this analysis believing that the current WFPN site will not comply with Section 73.315 of the Rules as shown below.

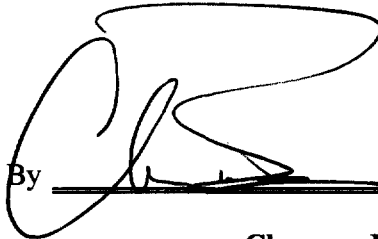
The Rosendale U.S. Census reference coordinates are located 15.9 kilometers from the WFPN site at a bearing of 335.45 degrees true. At this bearing, the HAAT is 399 meters and the 70 dBu extends out 16.1 kilometers at an ERP of 0.37 kW (6 kW equivalent) for the WFPN HAAT of 393 meters. The 1990 U.S. Census database describes Rosendale CDP as having an area of 4.7 square kilometers. When population within the 70 dBu contour is calculated at the block retrieval level, it is seen that maximum Class A facilities at the WFPN site reach 821 persons in the city of Rosendale which is 63.9% of the 1,284 persons residing in the community. Clearly, SUNY's use of the WFPN site on Channel 273A does not provide the required level of service to the city of Rosendale.

SUNY represents that its use of Channel 273A would be in the public interest when compared to its continued use of the Channel 204A sharetime operation. SHU disagrees as follows:

1. The licensed WFNP Channel 204A facility serves 320,268 persons within the 60 dBu contour. The WFNP directional operation on Channel 273A would be expected to serve 324,144 persons based on the affiant's calculations. A 1.2 percent increase in population served is de minimis and likely to be lost when the directional antenna CP is implemented due to real world restrictions in the construction and implementation of the directional antenna.
2. In February of 1992, when SUNY filed its first petition to delete Channel 204B1, it could have applied to the Commission for full Class B1 facilities using a directional antenna and an ERP equivalent to 25 kW at 100 meters HAAT to the north, providing 100% service to the city of Rosendale and providing service to a much wider area than can be provided from the WFNP site as a 6 kW Class A on Channel 273. A conservative population within Class B1 in the 60 dBu contour would be 525,523 persons. This is a 64.1% increase over the current WFNP Channel 204A operation and a 62.1% increase over the expected Channel 273A population served which WFNP is expected to proposed in its application for construction permit.

CONCLUSION

The foregoing was prepared on behalf of **Sacred Heart University, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By  _____

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 5th day of January, 1996,

Esther G. Sperbeck, NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT 15, 1997